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Dias, Liyanagamage Ranganath Prabashwara

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JAMIE ROMEO

MONROE COUNTY CLERK

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

LIYANAGAMAGE RANGANATH PRABASHWARA DIAS,

Petitioner,

-against-

UNIVERSITY OF ROCHESTER,

Respondent.

for a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

THE UNIVERSITY OF ROCHESTER'S VERIFIED ANSWER AND OBJECTIONS IN POINT OF LAW

Index No. E2024003035

Respondent UNIVERSITY OF ROCHESTER (the "University"), by and through its undersigned attorneys, Bond, Schoeneck & King, PLLC, for its Verified Answer to the Verified Article 78 Petition (the "Petition") of Petitioner LIYANAGAMAGE RANGANATH PRABASHWARA DIAS ("Petitioner"), filed February 14, 2024 (NYSCEF Doc. No. 1), states as follows:

1. States the allegations contained in Paragraph "1" of the Petition consist of a description of the instant proceeding for which no response is required; but, to the extent a response is required, DENIES the allegations contained in Paragraph "1" of the Petition.

2. States the allegations contained in Paragraph "2" of the Petition consist of a description of the instant proceeding for which no response is required; but, to the extent a response is required, DENIES the allegations contained in Paragraph "2" of the Petition.

3. DENIES the allegations contained in Paragraph "3" of the Petition.

4. ADMITS the allegations contained in Paragraph "4" of the Petition, except DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations concerning Petitioner's residence, and on that basis, DENIES the same.

5. ADMITS the allegations contained in Paragraph "5" of the Petition.

6. ADMITS the allegations contained in Paragraph "6" of the Petition that Dr. Stephen Dewhurst has been employed by the University as Interim Vice President for Research, and otherwise DENIES the remaining allegations contained in Paragraph "6" of the Petition.

7. ADMITS the allegations contained in Paragraph "7" of the Petition that Dr. Nick Vamivakas has been employed by the University as Dean of Graduate and Postdoctoral Affairs for the School of Arts, Sciences and Engineering, and otherwise DENIES the remaining allegations contained in Paragraph "7" of the Petition.

8. ADMITS the allegations contained in Paragraph "8" of the Petition Dr. Wendi Heinzelman has been employed by the University as Dean of the Hajim School of Engineering and Applied Sciences, and otherwise DENIES the remaining allegations contained in Paragraph "8" of the Petition.

9. ADMITS the allegations contained in Paragraph "9" of the Petition that Dr. David Figlio has been employed by the University as Provost and Gordon Fyfe Professor of Economics and Education, and otherwise DENIES the remaining allegations contained in Paragraph "9" of the Petition.

10. ADMITS that petitioner brings this special proceeding pursuant to Article 78 of New York's Civil Practice Law and Rules but DENIES that there is merit to the petition or that petitioner is entitled to relief.

11. ADMITS that petitioner brings this special proceeding pursuant to Article 78 of New York's Civil Practice Law and Rules but DENIES that there is merit to the petition or that petitioner is entitled to relief.

12. ADMITS that petitioner brings this special proceeding pursuant to Article 78 of New York's Civil Practice Law and Rules and that the University may be a respondent in such a special proceeding but DENIES that there is merit to the petition or that petitioner is entitled to relief.

13. ADMITS that venue in Monroe County is appropriate and DENIES the remaining allegations contained in Paragraph "13" of the Petition.

14. ADMITS the allegations contained in Paragraph "14" of the Petition.

15. ADMITS the area of low-temperature, high-pressure superconductivity is a specialized field, and that Petitioner purports to study superconductivity; states that the term "highly competitive" is too vague and subjective an allegation to be answered, and therefore DENIES this and all remaining allegations contained in Paragraph "15" of the Petition.

16. ADMITS that on March 8, 2023, *Nature*, an international, peer-reviewed scientific journal, published an article co-authored by Petitioner entitled "Evidence of near-ambient superconductivity in a N-doped lutetium hydride", which was retracted on November 7, 2023, and DENIES the remaining allegations contained in Paragraph "16" of the Petition.

17. ADMITS receipt of the March 16, 2023 letter from the National Science Foundation ("NSF") (the "Investigation Referral Letter"), which speaks for itself, and respectfully refers the Court to the Investigation Referral Letter for a complete and accurate statement of its terms.

18. ADMITS Petitioner has disputed the allegations of research misconduct, and DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the remaining allegations contained in Paragraph "18" of the Petition.

19. ADMITS the allegations in Paragraph "19" of the Petition.

20. ADMITS receipt of the March 16, 2023 letter from the National Science Foundation ("NSF") (the "Investigation Referral Letter"), which speaks for itself, and respectfully refers the Court to the Investigation Referral Letter for a complete and accurate statement of its terms.

21. ADMITS that the University's faculty handbook contains a statement of the University's Policy on Research Misconduct (the "Policy"), which speaks for itself, respectfully refers the Court to the Policy for a complete and accurate statement of its terms.

22. ADMITS that the University's faculty handbook contains a statement of the University's Policy on Research Misconduct (the "Policy"), which speaks for itself, respectfully refers the Court to the Policy for a complete and accurate statement of its terms.

23. ADMITS that the University's faculty handbook contains a statement of the University's Policy on Research Misconduct (the "Policy"), which speaks for itself, respectfully refers the Court to the Policy for a complete and accurate statement of its terms.

24. DENIES the allegations contained in Paragraph "24" of the Petition.

25. ADMITS the allegations contained in Paragraph "25" of the Petition.

26. ADMITS that Dr. Dewhurst, and not the Dean Heinzelman, appointed the Investigation Committee and, with respect to the allegations concerning the Policy, respectfully refers the Court to the Policy, which speaks for itself, for a complete and accurate statement of its terms, part of which is that "[t]he procedures outlined [in the Policy] are guidelines only and may

be adjusted as needed to accommodate special circumstances (e.g., allegations that originate outside of the University) . . .” and to the extent the allegations contained in Paragraph “26” of the Petition contradict those terms, DENIES the same, except ADMITS Dr. Dewhurst appointed the Investigation Committee.

27. States the Policy speaks for itself, respectfully refers the Court to the Policy for a complete and accurate statement of its terms, and to the extent the allegations contained in Paragraph “27” of the Petition contradict those terms, DENIES the same.

28. DENIES Dr. Dewhurst was “colluding with witnesses and others to manipulate the process,” and otherwise DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph “28” of the Petition, and on that basis, DENIES, the same.

29. States the Policy speaks for itself, respectfully refers the Court to the Policy for a complete and accurate statement of its terms, part of which is that “[t]he procedures outlined [in the Policy] are guidelines only and may be adjusted as needed to accommodate special circumstances (e.g., allegations that originate outside of the University) . . .”, and to the extent the allegations contained in Paragraph “29” of the Petition contradict those terms, DENIES the same.

30. ADMITS the University is a member of the Association of American University Professors, and states the Association of American University Professors, *Policy Documents and Reports*, 11th Ed. (the “AAUP Doc.”), speaks for itself, respectfully refers the Court to the AAUP Doc. for a complete and accurate statement of its terms, and to the extent the allegations contained in Paragraph “30” of the Petition contradict those terms, DENIES the same and further states that the University has not adopted the referenced AAUP Doc.

31. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph "31" of the Petition, and on that basis, DENIES, the same.

32. ADMITS the University appointed Dr. Marius Millot, Dr. Peter Celliers, and Dr. Marcus Knudson to the committee (the "Investigation Committee") investigating allegations of research misconduct concerning Petitioner (the "Investigation"), ADMITS Dr. Millot served as chair of the Investigation Committee, ADMITS the members of the Investigation Committee are not current or former University faculty members or members of the University's Research Policy Committee, and DENIES the remaining allegations contained in Paragraph "32" of the Petition.

33. ADMITS Petitioner wrote to NSF concerning the composition of the Investigation Committee but states that this occurred many months after Petitioner was advised of the composition of the Investigation Committee, and DENIES the remaining allegations contained in Paragraph "33" of the Petition.

34. States the September 8, 2023 letter from Petitioner to NSF speaks for itself, respectfully refers the Court to the letter for a complete and accurate statement of its terms, and to the extent the allegations contained in Paragraph "34" of the Petition contradict those terms, DENIES the same.

35. DENIES the allegations contained in Paragraph "35" of the Petition.

36. DENIES the allegations contained in Paragraph "36" of the Petition.

37. States the September 8, 2023 letter from Petitioner to NSF speaks for itself, respectfully refers the Court to the letter for a complete and accurate statement of its terms, and to the extent the allegations contained in Paragraph "37" of the Petition contradict those terms, DENIES the same.

38. DENIES the allegations contained in Paragraph "38" of the Petition.

39. ADMITS that different international research groups, including those listed in Paragraph "39" of the Petition, conduct research concerning superconductivity, and DENIES the remaining allegations contained in Paragraph "39" of the Petition.

40. DENIES the allegations contained in Paragraph "40" of the Petition.

41. DENIES the allegations contained in Paragraph "41" of the Petition.

42. DENIES the allegations contained in Paragraph "42" of the Petition.

43. DENIES the allegations contained in Paragraph "43" of the Petition.

44. DENIES the allegations contained in Paragraph "44" of the Petition.

45. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "45" of the Petition, and on that basis, DENIES the same.

46. DENIES the allegations contained in Paragraph "46" of the Petition.

47. DENIES the allegations contained in Paragraph "47" of the Petition.

48. ADMITS the allegations contained in Paragraph "48" of the Petition.

49. DENIES the allegations contained in Paragraph "49" of the Petition.

50. DENIES the allegations contained in Paragraph "50" of the Petition.

51. DENIES the allegations contained in Paragraph "51" of the Petition.

52. ADMITS that on August 3, 2023, Dean Heinzelman advised Petitioner that the then-current graduate students working in his lab were being reassigned, which was prior to the conclusion of the Investigation, and DENIES the remaining allegations contained in Paragraph "52" of the Petition.

53. DENIES the allegations contained in Paragraph "53" of the Petition.

54. DENIES the allegations contained in Paragraph "54" of the Petition.

55. DENIES the allegations contained in Paragraph "55" of the Petition.

56. DENIES the allegations contained in Paragraph "56" of the Petition.

57. ADMITS Petitioner commenced an Article 78 proceeding in this Court concerning the removal of students from his lab, and DENIES the remaining allegations contained in Paragraph "57" of the Petition.

58. ADMITS the University has convened a Grievance Committee concerning Petitioner's grievance arising out of the removal of students from his lab, and DENIES the remaining allegations contained in Paragraph "58" of the Petition.

59. DENIES the allegations contained in Paragraph "59" of the Petition.

60. DENIES the allegations contained in Paragraph "60" of the Petition.

61. DENIES the allegations contained in Paragraph "61" of the Petition.

62. DENIES the allegations contained in Paragraph "62" of the Petition.

63. DENIES the allegations contained in Paragraph "63" of the Petition.

64. DENIES the allegations contained in Paragraph "64" of the Petition.

65. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "65" of the Petition, and on that basis, DENIES the same.

66. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "66" of the Petition, and on that basis, DENIES the same.

67. ADMITS that the University extended Dr. Dissanayake an opportunity to relocate from Dr. Dias' lab and dependency on his grant funding to an alternative position within the

University and DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "67" of the Petition, and on that basis, DENIES the same.

68. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "68" of the Petition, and on that basis, DENIES the same.

69. DENIES the allegations contained in Paragraph "69" of the Petition.

70. ADMITS Dr. Thornton communicated with Dr. Dissanayake concerning retraction of the 2023 *Nature* publication, and DENIES the remaining allegations contained in Paragraph "70" of the Petition.

71. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "71" of the Petition, and on that basis, DENIES the same.

72. ADMITS that Dr. Thornton communicated with Dr. Dissanayake by email, which email speaks for itself, and respectfully refers the Court to the email, and DENIES the remaining allegations in Paragraph "72".

73. States Exhibit I to the Petition speaks for itself, respectfully refers the Court to the exhibit for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "73" of the Petition contradict those terms, DENIES the same.

74. DENIES the allegations contained in Paragraph "74" of the Petition.

75. ADMITS the allegations contained in Paragraph "75" of the Petition that, in accordance with the University's policy, Petitioner was not permitted to bring an attorney with

him to the Investigation Committee interviews, and DENIES the remaining allegations contained in Paragraph "75" of the Petition.

76. DENIES the allegations contained in Paragraph "76" of the Petition.

77. DENIES the allegations contained in Paragraph "77" of the Petition.

78. States Exhibit J to the Petition speaks for itself, respectfully refers the Court to the exhibit for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "78" of the Petition contradict those terms, DENIES the same.

79. DENIES the allegations contained in Paragraph "79" of the Petition.

80. DENIES the allegations contained in Paragraph "80" of the Petition, except ADMITS that the exhibits to the investigation report were made available to Petitioner in "read-only" format on the Ropes & Gray portal and that the investigation report and transcripts of Petitioner's interviews were made available to Petitioner in PDF.

81. DENIES the allegations contained in Paragraph "81" of the Petition, except ADMITS that the exhibits to the investigation report were made available to Petitioner in "read-only" format on the Ropes & Gray portal.

82. DENIES the allegations contained in Paragraph "82" of the Petition.

83. States the Policy speaks for itself, respectfully refers the Court Policy to the Redbook for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "83" of the Petition contradict those terms, DENIES the same.

84. DENIES the allegations contained in Paragraph "84" of the Petition.

85. DENIES the allegations contained in Paragraph "85" of the Petition.

86. DENIES the allegations contained in Paragraph "86" of the Petition.

87. ADMITS that Petitioner is from Sri Lanka and DENIES the remaining allegations contained in Paragraph "87" of the Petition.

88. ADMITS Petitioner was not permitted to have an attorney present during the Investigation, and DENIES the remaining allegations contained in Paragraph "88" of the Petition.

89. DENIES the allegations contained in Paragraph "89" of the Petition.

90. ADMITS the allegations with respect to the number of days required to complete the Investigation and DENIES the remaining allegations in Paragraph "90" of the Petition.

91. ADMITS that the Policy contemplates a 120-day timeframe in the usual case and, respectfully refers the Court to the Policy, which speaks for itself, for a complete and accurate statement of its terms, part of which is that "[t]he procedures outlined [in the Policy] are guidelines only and may be adjusted as needed to accommodate special circumstances (e.g., allegations that originate outside of the University) . . .", and to the extent the allegations contained in Paragraph "91" of the Petition contradict those terms, DENIES the same.

92. ADMITS the Investigation Committee sent Petitioner its Draft Investigation Report, as well as his interview transcripts, on December 22, 2023, and that it provided a deadline to respond, and DENIES the remaining allegations contained in Paragraph "92" of the Petition.

93. ADMITS Petitioner was granted an extra week to respond to the Draft Investigation Report, and DENIES the remaining allegations contained in Paragraph "93" of the Petition.

94. DENIES the allegations contained in Paragraph "94" of the Petition.

95. States the Investigation Referral Letter speaks for itself, respectfully refers the Court to the Investigation Referral Letter for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "95" contradict those terms, DENIES the same.

96. DENIES the allegations contained in Paragraph "96" of the Petition.

97. DENIES the allegations contained in Paragraph "97" of the Petition.

98. States the Draft Investigation Report (and Final Investigation Report) speaks for itself, respectfully refers the Court to the Draft Investigation Report (and Final Investigation Report) for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "98" contradict those terms, DENIES the same.

99. States the Draft Investigation Report (and Final Investigation Report) speaks for itself, respectfully refers the Court to the Draft Investigation Report (and Final Investigation Report) for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "99" contradict those terms, DENIES the same.

100. DENIES the allegations contained in Paragraph "100" of the Petition.

101. DENIES the allegations contained in Paragraph "101" of the Petition.

102. DENIES the allegations contained in Paragraph "102" of the Petition.

103. DENIES the allegations contained in Paragraph "103" of the Petition.

104. ADMITS the Draft Investigation Report (and Final Investigation Report) finds Petitioner committed research misconduct, and DENIES the remaining allegations contained in Paragraph "104" of the Petition.

105. DENIES the allegations contained in Paragraph "105" of the Petition.

106. States the Policy speaks for itself, respectfully refers the Court to the Policy for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "106" contradict those terms, DENIES the same.

107. States the NSF Regulations speak for themselves, respectfully refers the Court to the NSF Regulations for a complete and accurate statement of their terms, and, to the extent the allegations contained in Paragraph "107" contradict those terms, DENIES the same.

108. DENIES the allegations contained in Paragraph "108" of the Petition.

109. DENIES the allegations contained in Paragraph "109" of the Petition.

110. DENIES the allegations contained in Paragraph "110" of the Petition.

111. Admits the identified students did not participate in the retraction letter described in Paragraph "111" of the Petition, and DENIES the remaining allegations contained in Paragraph "111" of the Petition.

112. DENIES the allegations contained in Paragraph "112" of the Petition.

113. DENIES the allegations contained in Paragraph "113" of the Petition.

114. DENIES the allegations contained in Paragraph "114" of the Petition.

115. DENIES the allegations contained in Paragraph "115" of the Petition.

116. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "116" of the Petition, and on that basis, DENIES the same.

117. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "117" of the Petition, and on that basis, DENIES the same.

118. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "118" of the Petition, and on that basis, DENIES the same.

119. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "119" of the Petition, and on that basis, DENIES the same.

120. ADMITS that Mr. McBride was a witness in the Investigation and DENIES the allegations contained in Paragraph "120" of the Petition.

121. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "121" of the Petition, and on that basis, DENIES the same.

122. DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief as to the truth of the allegations contained in Paragraph "122" of the Petition, and on that basis, DENIES the same.

123. DENIES the allegations contained in Paragraph "123" of the Petition.

124. DENIES the allegations contained in Paragraph "124" of the Petition.

125. States Exhibit P to the Petition speaks for itself, respectfully refers the Court to the exhibit for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "125" of the Petition contradict those terms, DENIES the same.

126. DENIES the allegations contained in Paragraph "126" of the Petition.

127. DENIES the allegations contained in Paragraph "127" of the Petition.

128. States Exhibit O to the Petition speaks for itself, respectfully refers the Court to the exhibit for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "128" of the Petition contradict those terms, DENIES the same.

129. DENIES the allegations contained in Paragraph "129" of the Petition.

130. DENIES the allegations contained in Paragraph "130" of the Petition.

131. States Exhibit O to the Petition speaks for itself, respectfully refers the Court to the exhibit for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "131" of the Petition contradict those terms, DENIES the same.

132. ADMITS the Investigation Committee should not rely on biased and unqualified students in making determinations, and DENIES the remaining allegations contained in Paragraph "132" of the Petition.

133. DENIES the allegations contained in Paragraph "133" of the Petition.

134. States Exhibit O to the Petition speaks for itself, respectfully refers the Court to the exhibit for a complete and accurate statement of its terms, and, to the extent the allegations contained in Paragraph "134" of the Petition contradict those terms, DENIES the same.

135. DENIES the allegations contained in Paragraph "135" of the Petition.

136. DENIES the allegations contained in Paragraph "136" of the Petition.

137. DENIES the allegations contained in Paragraph "137" of the Petition.

138. DENIES the allegations contained in Paragraph "138" of the Petition.

139. DENIES the allegations contained in Paragraph "139" of the Petition.

140. DENIES the allegations contained in Paragraph "140" of the Petition.

141. States the University's Grievance Policy speaks for itself, respectfully refers the Court to the Grievance Policy for a complete and accurate statement of its terms, and to the extent the allegations contained in Paragraph "141" contradict those terms, denies the same.

142. DENIES the allegations contained in Paragraph "142" of the Petition.

143. DENIES the allegations contained in Paragraph "143" of the Petition.

144. DENIES the allegations contained in Paragraph "144" of the Petition.

145. DENIES the allegations contained in Paragraph "145" of the Petition.

146. ADMITS the allegations contained in Paragraph "146" of the Petition.

147. States the February 14, 2024 letter speaks for itself, respectfully refers the Court to the letter for a complete and accurate statement of its terms, and to the extent the allegations contained in Paragraph "147" contradict those terms, denies the same.

148. DENIES the allegations contained in Paragraph "148" of the Petition.

149. DENIES the allegations contained in Paragraph "149" of the Petition.

150. DENIES the allegations contained in Paragraph "150" of the Petition.

151. DENIES the allegations contained in Paragraph "151" of the Petition.

152. ADMITS Dr. Dewhurst should – and did – maintain an unbiased, impartial stance throughout the Investigation, and DENIES the remaining allegations contained in Paragraph "152" of the Petition.

153. DENIES the allegations contained in Paragraph "153" of the Petition.

154. The University REPEATS and REASSERTS its responses to the allegations contained in Paragraphs "1" through "153" of the Petition as if set forth in full herein.

155. DENIES the allegations contained in Paragraph "155" of the Petition.

156. DENIS the allegations contained in Paragraph "156" of the Petition.

157. DENIES the allegations contained in Paragraph "157" of the Petition.

158. DENIES each and every allegation not specifically admitted above.

159. DENIES each and every allegation for which the University DENIES KNOWLEDGE AND INFORMATION sufficient to form a belief.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

160. The Petition fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

161. The Petition must be denied because the University substantially complied with its policies and procedures, and the decision at issue was not arbitrary or capricious.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

162. To the extent the Petition seeks "damages," such relief is not available in this Article 78 special proceeding.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

163. Even if damages were available in this Article 78 special proceeding, Petitioner has failed to mitigate any such damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

164. Petitioner comes to the Court with "unclean" hands. Petitioner has engaged in the intentional fabrication and falsification of research findings. Petitioner's unclean hands preclude him from seeking relief in a court of equity, which is an Article 78 "special proceeding".

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

165. The Petition is barred by the statute of limitations to the extent the Petitioner seeks to challenge University decisions that occurred more than four (4) months prior to the filing of this Petition.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

166. The Petition is barred for failure to exhaust administrative remedies.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE AND OBJECTION IN POINT OF LAW

167. The Petition is barred pursuant to CPLR 7801 because the determination sought to be reviewed is "non-final."

WHEREFORE, the University respectfully requests the Court deny the Petition in its entirety and with prejudice, as well as grant any other and further relief the Court deems just and proper.

Dated: March 28, 2024

BOND, SCHOENECK & KING, PLLC

By:_____

Laura H. Harshbarger
Liza R. Magley
One Lincoln Center
Syracuse, New York 13202-1355
Telephone: (315) 218-8000
Email: lharshbarger@bsk.com
lmagley@bsk.com

Attorneys for Respondent
University of Rochester

TO: J. MORGAN LEVY FIRM PLLC
J. Morgan Levy
24 N. Main Street
Fairport, New York 14450
Telephone: (585) 678-1084
Email: morgan@jmorganlevyfirm.com

Attorneys for Petitioner
Liyanagamage Ranganath Prabashwara Dias

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

Stephen Dewhurst, Ph.D. being duly sworn, deposes and says that deponent is the Vice President for Research and Research Integrity Officer of the University of Rochester, the entity named in the within action, that deponent has read the foregoing Verified Answer and knows the contents thereof, that the same is true to deponent's own knowledge, except as to such matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

LISA MARIE FRASCO
Notary Public - State of New York
NO. 01FR6105654
Qualified in Ontario County
My Commission Expires Aug 6, 2024

Stephen Dewhurst, Ph.D.

Sworn to before me this
27th day of March, 2024

Lisa Marie Frasco
Notary Public